

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Fixed and Mobile Services in the Mobile	)	ET Docket No. 10-142
Satellite Service Bands at 1525-1559 MHz and	)	
1626.5-1660.5 MHz, 1610-1626.5 MHz and	)	
2483.5-2500 MHz, and 2000-2020 MHz and	)	
2180-2200 MHz	)	
	)	

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF  
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to clarify and/or reconsider a limited portion of the Report and Order (“*Order*”) that was recently adopted in the Mobile Satellite Service/Ancillary Terrestrial Service (“MSS/ATC”) proceeding.<sup>2</sup> CTIA supports the vast majority of the *Order*, and specifically applauds the Commission’s decisions to establish primary Fixed and Mobile allocations for the 2000-2020 MHz and 2180-2200 MHz bands and to apply its secondary market rules to MSS spectrum.<sup>3</sup> CTIA, however, files this Petition to ask the Commission to clarify and/or reconsider paragraph 28 of the *Order*, in which the Commission

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<sup>1</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Report and Order, FCC 11-57, ET Docket No. 10-142 (2011) (“*2011 MSS Order*”).

<sup>3</sup> *Id.*

“emphasize[s] that responsibility for protecting services rests not only on new [MSS/ATC] entrants *but also on incumbent users themselves*, who must use receivers that reasonably discriminate against reception of signals outside their allocated spectrum.”<sup>4</sup> While CTIA believes that there can, and should, be times when the Commission investigates the balance between the responsibilities of new entrants and incumbent users with regard to interference, this is not the place. The Commission previously adopted specific rules, as part of the original grant of ancillary terrestrial authority, which placed the full responsibility for any interference mitigation on the MSS/ATC licensee.<sup>5</sup> In fact, the Commission stated:

We adopt technical parameters for ATC operations in each of the bands at issue designed to protect adjacent and in-band operations from interference from ATC. We fully expect that these operational parameters will be sufficient. Nevertheless, in the unlikely event that an adjacent MSS or other operator does receive harmful interference from ATC operations, either from ATC base stations or mobile terminals, the ATC operator must resolve such interference.<sup>6</sup>

Therefore, the Commission established technical parameters but did not stop there. Rather than leaving adjacent licensees to operate in an environment where the only protections are those technical parameters, the rules adopted by the Commission established a “backstop” providing unequivocally that “[i]f harmful interference is caused to other services by ancillary MSS ATC operations, either from ATC base stations or mobile terminals, the MSS ATC operator must resolve any such interference.”<sup>7</sup> Accordingly, as detailed below, CTIA asks the Commission to clarify that it did not intend to limit the interference protections set forth in Sections 25.253 and

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<sup>4</sup> *Id.* at ¶ 28 (emphasis added).

<sup>5</sup> *See* 47 C.F.R. § 25.255.

<sup>6</sup> *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order, 18 FCC Rcd 1962, ¶ 104 (2003) (internal citations omitted).

<sup>7</sup> 47 C.F.R. § 25.255.

25.255 of its rules or reconsider this paragraph of the Order to the extent it imposes *new* interference protection obligations on non-MSS/ATC services.

The Commission's decision appears to adopt a partial shift of the burden of interference protection from MSS/ATC licensees to incumbent users, in direct conflict with the Commission's existing rules. In the Commission's nearly 10-year history of MSS/ATC rulemaking proceedings, the Commission expressly limited the potential for harmful interference from MSS/ATC operators by adopting rules that place the burden of out-of-band interference protection on those MSS/ATC providers. Specifically, the Commission adopted the technical parameters set forth in Section 25.253 *and* the backstop set forth in Section 25.555 to protect incumbent users from interference from MSS/ATC operations. The original decision, requiring new MSS/ATC entrants to bear the burden of mitigating potential interference, applies specifically to this band. The traditional balancing of interference mitigation that the Commission can investigate (and often does investigate) as part of a new entrant's deployment into a band already was decided in this case by the Commission, with the result being Sections 25.255 and 25.253. Not only does Section 25.255 expressly place responsibility on the MSS ATC operator to resolve any harmful interference caused by ancillary MSS ATC operations,<sup>8</sup> Section 25.253(c)(2) further requires certain ATC applicants to coordinate with terrestrial CMRS operators prior to initiating ATC transmissions when co-locating ATC base stations with terrestrial CMRS base stations that make use of GPS time-based receivers.<sup>9</sup>

CTIA seeks clarification that the Commission did not in any way intend to limit the interference protections set forth in Sections 25.253 and 25.555 by now reversing its prior

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<sup>8</sup> 47 C.F.R. § 25.255. In the event of a disagreement, the parties to an interference dispute may petition the Commission for a resolution of their claims. *Id.*

<sup>9</sup> 47 C.F.R. § 25.253(c)(2).

decision and potentially shifting the burden of interference protection from MSS/ATC licensees to incumbent users.

To the extent the Commission *does* intend paragraph 28 to require incumbents to bear some of the burden of interference protection from MSS/ATC licensees, then the Commission must reconsider this action. The FCC may not reverse its prior rules—or any other rules—without first providing the public an opportunity to comment on the proposed rule modifications,<sup>10</sup> and it must then justify its reason for such a change.<sup>11</sup> But here, in the MSS bands with the existing rules regarding MSS/ATC responsibility for interference mitigation, if the Commission is seeking to obligate incumbent users with receiver requirements for interference protection, the Commission departed from its MSS/ATC interference protection rules without ever seeking comment on such changes in the Notice of Proposed Rulemaking (“*NPRM*”) that preceded the *Order*. Specifically, the *NPRM* did not propose to, or seek comment on, shifting the burden of interference protection from MSS/ATC licensees to CMRS licensees, nor did the *NPRM* ask how to address any increased interference that could result from liberalized MSS/ATC rules. Rather, the *NPRM* focused exclusively on two topics: (i) adding co-primary Fixed and Mobile allocations to the 2 GHz band; and (ii) applying the Commission’s secondary market policies and rules to MSS spectrum used for terrestrial services.<sup>12</sup>

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<sup>10</sup> An agency may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. See *United States v. Nixon*, 418 U.S. 683, 696 (1974), cited with approval, *FCC v. Fox Television Stations, Inc.*, 556 U.S. \_\_\_, 129 S. Ct. 1800, 1811 (2009).

<sup>11</sup> An agency must “examine the relevant data and articulate a satisfactory explanation for its action.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43).

<sup>12</sup> *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481, 9482, ¶ 2 (2010).

Accordingly, CTIA, other industry members, and the general public were unable to comment on this apparent revision to the FCC's interference protection policies.

To remedy this problem, the Commission should issue a clarification order explaining that it did not in any way intend to limit the interference protections set forth in Sections 25.253 and 25.555; or, alternatively, issue a reconsideration order that eliminates any new requirements imposed in paragraph 28 of the *Order*. If the Commission wishes to revise its MSS/ATC interference protection policies at a later time, it must first conduct a rulemaking that solicits comment on this specific issue.

Respectfully submitted,

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